

REMARKS

Claim 1 has been amended to recite "a first C₁-C₃ alkyl (meth)acrylate monomer, alone or as a mixture of C₁-C₃ alkyl (meth)acrylate monomers, in the presence of one or more additional monomers selected from the group consisting of acrylic acid and methacrylic acid" Support for the claims as amended can be found throughout the specification including, for example, ¶¶ 0011-0013, 0038-0041, 0049-0050, 0059, and 0074-0076; in Example 5 (¶ 0173-0182); and in original claim 1.

Claim 5 has been cancelled without prejudice.

Claim 8 has been amended to depend from claim 7 to correct an obvious typographical error. This amendment does not change the scope of the claim in any way.

Applicant submits that no new matter has been added via these amendments.

Objection

Claim 8 was objected to for depending from claim 14. (Paper No. 20071206 at 2.) Claim 8 has been amended to depend from claim 7. Accordingly, the objection has been rendered moot and withdrawal is requested.

35 U.S.C. §102(b)

Claims 1-2, 4, 14-18, 20, and 22-24 have been rejected as anticipated by Mougin et al., U.S. Patent 5,851,517 ("*Mougin*"). (Paper No. 20071206 at 2.)

Anticipation requires "identity of invention." *Glaverbel Societe Anonyme v. Northlake Mktg. & Supply*, 45 F.3d 1550, 1554, 33 U.S.P.Q.2d 1496, 1498 (Fed. Cir. 1995). Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claim. *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co.*, 730 F.2d

1452, 1458, 221 U.S.P.Q. 481, 485 (Fed. Cir 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

Mougin discloses "a dispersion of particles surface stabilized by polymer particles in a non-aqueous medium." (Abstract.) *Mougin* discloses that its polymers may be non-film-forming polymers and that "[a]mong the non-film-forming polymers which may be mentioned are vinyl or acrylic radical copolymers or homopolymers, . . . such as polymethyl methacrylate, polystyrene or poly-tert-butyl acrylate." (Col. 2, lines 51-54 and col. 3, lines 1-6.) *Mougin*, however, does not disclose acrylic acid or methacrylic acid.

Claim 1, the sole independent claim, has been amended to recite:

[a] polymer . . . obtained by polymerization of a polymerizable mixture, comprising:

(i) a first C₁-C₃ alkyl (meth)acrylate monomer, alone or as a mixture of C₁-C₃ alkyl (meth)acrylate monomers, ***in the presence of one or more additional monomers selected from the group consisting of acrylic acid and methacrylic acid***; and

(ii) at least one silicone macromonomer

(Emphasis added.) *Mougin*, however, is silent as to a mixture of a C₁-C₃ alkyl (meth)acrylate monomer and acrylic acid or methacrylic acid. Thus, *Mougin* does not, and indeed cannot, disclose a polymer that is obtained by the polymerization of such a mixture with a silicone macromonomer, as claimed.

Accordingly, *Mougin* does not disclose each and every element of the claimed invention, as amended. Accordingly, the rejection has been rendered moot and withdrawal is requested.

Claims 1-24 have been rejected as anticipated by Torgerson et al., WO 93/23446 ("*Torgerson*"). (Paper No. 20071206

at 4.) As discussed above, anticipation requires "identity of invention." *Glaverbel*, 45 F.3d at 1554, 33 U.S.P.Q.2d at 1498.

Torgerson discloses "adhesive agents containing polysiloxane-grafted polymers and . . . compositions, such as cosmetic compositions containing such adhesive agents." (Page 1, lines 7-12.) *Torgerson* discloses that its adhesive agents are polymeric and contain "film-forming polysiloxane-grafted polymers, made by polymerization of polysiloxane-containing monomers with non-polysiloxane-containing monomers" (Page 3, line 34 - page 4, line 2.) *Torgerson* discloses over 70 examples of non-polysiloxane-containing monomers that may be used in its invention. (Page 8, line 9 - page 9, line 8.) *Torgerson* discloses numerous solvents that may be used in its adhesive agents. (Page 16, lines 4-25.)

Claim 1, as amended, recites:

a dispersion of particles in **a non-aqueous, silicone medium**, wherein the particles comprise at least one acrylic polymer . . . obtained by polymerization of a polymerizable mixture, comprising:

(i) **a first C₁-C₃ alkyl (meth)acrylate monomer**, alone or as a mixture of C₁-C₃ alkyl (meth)acrylate monomers, in the presence of **one or more additional monomers selected from the group consisting of acrylic acid and methacrylic acid**; and

(ii) at least one silicone macromonomer

(Emphasis added.) *Torgerson* does not disclose what is claimed.

Torgerson does not disclose a mixture of a C₁-C₃ alkyl (meth)acrylate monomer and acrylic acid or methacrylic acid, as claimed. In the only two examples of its polymers ("Experimental A" and "Experimental B" - page 30, line 22 - page 31, line 24), *Torgerson* employs a t-butyl acrylate as a non-polysiloxane-containing monomer. Clearly, this is not a C₁-C₃ alkyl (meth)acrylate monomer, as claimed. Moreover, Experimental B does not employ any second

non-polysiloxane-containing monomer. Accordingly, *Torgerson* does not, and indeed cannot, disclose a polymer that is obtained by the polymerization of a mixture of a C₁-C₃ alkyl (meth)acrylate monomer and acrylic acid or methacrylic acid with a silicone macromonomer, as claimed.

In addition, while *Torgerson* discloses many possible solvents, it does not disclose any non-aqueous, silicone medium (solvent), as claimed. *Torgerson* includes eleven (11) examples of its compositions. Nine (9) of these examples (Examples I-VIII and XI) have no silicone solvent of any type. Ten (10) of the examples (Examples I-III and V-XI) contain significant amounts of water and are clearly not non-aqueous. Only two examples (Examples IX and X) include a silicone solvent of any type. The compositions of Examples IX and X octamethyl cyclotetrasiloxane and decamethyl cyclopentasiloxane. However, each of these compositions contains a large majority of water - 84.87 %(wt) and 84.42 %(wt), respectively.

In addition, the compositions of Examples IX and X employ the polymer of Experimental B. The polymer of Experimental B, however, is derived from a mixture including a t-butyl acrylate monomer and no second non-polysiloxane-containing monomer. Accordingly, these compositions do not include the claimed polymer.

Torgerson does not disclose the polymer claimed. *Torgerson* does not disclose the non-aqueous, silicone medium claimed. *Torgerson* simply does not disclose a dispersion of particles of the claimed polymer in the claimed non-aqueous, silicone medium.

For the foregoing reasons, *Torgerson* does not disclose each and every element of the claimed invention, as amended. Accordingly, the rejection has been rendered moot and withdrawal is requested.

As it is believed that the objection and rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 11, 2008

Respectfully submitted,

By



Stephen J. Brown

Registration No.: 43,519

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicant